

To: Honorable Mayor Steve Adler and distinguish Council member Member

**Zoning case# C14-2017-0042**

Case manager: Sherri Sirwaitis

Phone# (512) 974-3057

[Sherri.sirwaitis@Austintexas.gov](mailto:Sherri.sirwaitis@Austintexas.gov)

From: The Property Owner

Abraham Birgani

Phone# (512) 998-2525

**Subject: Rezoning of lot2 of Indian oaks 2 subdivision from LR-CO/SF2 to CS-MU**

The Lot2 of Indian Oakes 2 Subdivision has two addresses:

1. Address from McNeil Drive: 6610 McNeil Dr. Austin TX. 78729 and Address
2. from Blackfoot Trail: 12602 Blackfoot Trial Austin TX. 78729

**Please see the following important documentation about the property(lot2):**

- 1 Indian Oakes 2 Subdivision is in Williamson County Texas and is comprised of 4 properties or 4 lots (Lots 1, 2, 3 & 4). Dated September 19<sup>th</sup>, 1977. [See page 12 for this legal document](#)
- 2 On **April 29<sup>th</sup>, 1985**, all four lots of Indian Oakes 2 Subdivision per Amendment of Restriction #18833 are no longer restricted to be used for residential purposes only and may be used for any lawful purpose. [See page 13 for this legal document](#)
- 3 Over 27 years ago in December of 1989, I purchased Lot2 for developing it for commercial use. Prior to purchasing the property from the previous owners, Mr. Richard A. Bouton and Mrs. Diane C. Bouton, I required them to correct the error on the property's (lot2) building line to allow me with enough space for a commercial building and parking lot. Document dated September 23<sup>rd</sup>, 1989. [See page 14 for this legal document.](#)

**4 Please See History of the property prior to annexation:**

- a) 1990 - **prior to annexation**, I received a site plan exemption from the City of Austin because my property (lot2) was in Williamson County. I also received electrical and plumbing permits from the City of Austin as well.
- b) 1990 to 1991 - **prior to annexation**, I hired a contractor, Charles E. Salisbury, and started construction on 25 feet by 60 feet additional commercial building on lot2 for commercial use.
- c) 1992 to 1995 – **prior to annexation**, Mr. Salisbury abandoned the commercial building project before completion. Unfortunately, this caused major delays in completing the project. I was forced to take the contractor to court for my losses, which I won, but the contractor filed bankruptcy before I could collect on the ruling. [Please see page 15 document. Reason for building project completion delay.](#)
- d) 1993, **Prior to annexation**, I managed to complete the commercial building project by myself. [Please see page 16 picture of the building.](#)
- e) 1995 to 1996 – **Prior to annexation**, I met with Mr. Carl McClendon, Mr. Shaw Hamilton from City of Austin and Mr. Joe England from Williamson County to obtain a permit for constructing a commercial parking lot for my commercial building.
- f) 1997 (first quarter) – **Prior to annexation**, merchandise Persian rugs, and computers) received and beauty salon license issued.
- g) May 1<sup>st</sup>, 1997 – **Prior to annexation**, sales tax permit issued for my company A-Mart Enterprises at 12602 Blackfoot Trail, Austin TX 78729. [Please see page 17.](#)
- h) 1996 to early 1997 – **Prior to annexation**, searched and hired IT Gonzales Civil Engineer to draw site plan for commercial parking lot and water quality filtration/retention system per City of Austin and Texas Natural resource conservation requirement.

- i) July 1997 – **Prior to annexation**, permit for waste water line and connection point approved and installed on the property by City of Austin.
  - j) December 1<sup>st</sup>, 1997 – **Prior to annexation**, the site plan approved by the Texas Natural Resource Conservation Commission was received.
  - k) December 31<sup>st</sup>, 1997 – **Prior to annexation**, the City of Austin approved site plan/development permit **No. SP-97-0439D** for parking lot and water filtration/retention system on Lot2 in the Indian Oakes 2 Subdivision. **Please see page 18**
  - l) **Prior to annexation**, please notice on approved site plan by City of Austin permit No. SP-97-0439D), name of my businesses (**Import/export business** and beauty salon. **Please see pages 18.**
  - m) December 1997 – **Prior to annexation**, I hired a contractor for construction of parking lot and water quality filtration/retention system on my property (lot2) per the approved site plan No. SP-97-0439D by the City of Austin.
- 5 **On December 31<sup>st</sup>, 1997 or January 1<sup>st</sup>, 1998 - City of Austin annexed Indian Oakes 2 Subdivision and other properties in Indian Oakes Subdivision. Please see after annexation the following history on the property:**
- a) March 20<sup>th</sup>, 1998, after annexation - Although my commercial building project was 100% completed a few years prior to annexation, while I was more than 40% completed with the parking lot and the water filtration/retention system, the project was stopped by City of Austin code enforcer, Mr. **Paul Tomasovic** due to neighborhood complaints.
  - b) Unfortunately, in the following weeks of stopping my project by the code enforcer Mr. Paul Tomasovic from the City of Austin, the city of Austin **revoked** all my approved permits including the approved site plan No. SP-97-0439D (dated December 31<sup>th</sup>, 1997) and forcing me to rezone my property.

- c) In 1998, I was forced to apply for CS/GR land development code for all of Lot 2. My application was assigned to case manager, Mr. Christopher Johnson, and the City of Austin staff, which recommended a LR-CO designation on my property, failing to communicate with me during the process. Mr. David Sullivan from the zoning and planning commission worked with several of my neighbors, notably Mr. Pendleton (the man whose wife wanted to destroy my commercial building), and unfairly recommended the division of my small property into two smaller tracts (tract 1 and tract 2) against my wishes, which made my property worthless. Upon conclusion of several city council meetings, Mayor of Austin Mr. Kirk Watson sided with the neighborhood and my CS/GR land development codes were denied and I was instead given a SF2 for tract 1 and the highly restricted LR-CO for tract 2 with very few options. Additional restrictions including building height and hours of operation were also imposed. I believe my case manager, Mr. Christopher Johnson, and staff did not bother to review the legal documents that I submitted to them on many occasions, outlining my legal rights for developing my commercial property and instead of recommending a CS/GR code or exemption the property from rezoning, they recommended a highly restrictive LR-CO code for my property. The City of Austin staff and zoning and planning commission's recommendation of LR-CO was THE key decision that prevented me from getting a fair zoning (CS/GR) based on my legal rights to develop the property. CS/GR is compatible with other businesses in the surrounding area and along McNeil Dr.
- d) On November 10<sup>th</sup>, 1999, I was forced again by City of Austin to submit another site plan for approval which I had no other choice. Finally, after two 2.5 years delay, I received a new approved site plan permit number [SP-99-2171C](#), dated April 5<sup>th</sup>, 2000. [Please see page 19](#)
- e) In May 2002, I had developed the parking lot, water filtration and retention system based on new site plan specification and requirement and finally my parking lot project and water quality system were completed.



- f) The outcome of these heavy restrictions made my property worthless. Losing two businesses caused great monetary loss and emotional stress, rendering my property useless to me and my purpose for owning and purchasing this property during the last 27 years.
  - g) During the past 27 years, I was able to lease the property for a total of six years. From 2002 to 2005 it was leased to Salon for Kids, from 2008 to 2011 it was leased to Thrifty Nifty (sales of second hand household items), I could not open my business neither. For more than 21 years, the building has been vacant. The money I have made off the property has barely been enough to cover the taxes and some of the building repair and property taxes has increased more than 400%.
  - h) **Important Notice:** Prior to annexation, based on my legal right to develop my commercial property, City of Austin and the neighborhood did not have the legal right to oppose me. **It appears to me after annexation the City of Austin took my legal rights away to develop and use my commercial property as I see fit and gave it to the neighborhood.**
- 6 **Now, 20 years later after the annexation, having seen so many nearby properties on McNeil Dr. zoned for LI, CS, W/LO and GR; In April 2017, I submitted an application for rezoning of my property (Lot 2), Case# C14-2017-0042, from LR-CO & SF2 to CS1-MU**
  - 7 On May 4th, 2017, **I met with the neighborhood** to discuss my previous intent to rezone my property to CS1-MU. One of the allowed business options under CS1 zoning-code is alcohol sales, which was their primary concern and focus of discussion. I stated to the neighborhood association during that meeting that I would reconsider CS1-MU zoning and would **accept CS-MU** zoning instead, which does not allow alcohol sales.
  - 8 On May 16<sup>th</sup>, 17- The CS-MU zoning code change has been submitted to the City of Austin case manager, Ms. Sirwaitis, informing everyone about our agreement to this change.

- a) Stepping Stone school owner Rhonda Paver's attorney Kenneth Richey has been waiting on this written notice from the case manager regarding this change to CS-MU, in which they have agreed to then remove their opposition from the valid petition.
  - b) However, there is positive information, on June 1<sup>st</sup>, 2017 Ms. Rhonda Paver's Attorney, Kenneth Rickey, sent case manager Sherri Sirwaitis a signed PDF document stating her intentions to withdraw her formal petition. **Please see page 20 for Ms. Paver letter of withdrawing.**
  - c) **There is no adjacent property owner that opposes the rezoning of my property. Please see page 21.**
  - d) **There is no valid petition opposed to rezoning Please see page 22.**
- 9 Although I am in the Indian Oakes 2 subdivision, since 1997 I have been trying very hard to work with the Indian Oakes neighborhood, which is a separate subdivision, to address their concerns regarding the zoning of my property. What I have presented in this documentation is based in fact and reality. Although there has been push back and opposition from some neighbors, it is time to put an end to the unreasonable and illogical neighborhood opposition. **City officials need to ask the neighborhood, why do they have this negative opposition toward me but have supported other property owners in their rezoning efforts based on their business needs.**
- 10 Since my property was annexed by the City of Austin, the same neighborhood has used the City of Austin and hindered my efforts to rezone my property into something viable. **Please see the following few examples of opposition toward me, but support for others, from the Indian Oakes Neighborhood Association:**

- a) The property, Case# C14-98-0060, in Indian Oakes subdivision, the size of this property is also twice the size of mine. This undivided property, which all of this property has been rezoned with CS-CO, is fully supported by the same neighborhood association and city staff recommendation that has opposed the rezoning of my property. **What is the logical reasoning behind this bias and unfair opposition and why are the city officials supporting them?** Please see page 23 for location of this property relative to my property.
  - b) Lot 4 of Indian Oakes 2 subdivision, Case# C14-2011-0046, the size of this property is about 1½ times the size of mine. This undivided property, which all of this property has been rezoned with W/LO-CO, is fully supported by the same neighborhood association and city staff recommendation that has opposed the rezoning of my property. Again, **what is the logical reasoning behind this bias and unfair opposition and why are the city officials supporting them?** Please see page 24 for location of this property relative to my property.
  - c) The vacant lot, 12601 Blackfoot trail belong to Mehdi Zarchi and Elham Tarkashvand. There is a building on this lot which they have used for storing their air condition business parts for many years. Worth mentioning, this is also another example of this neighborhood bias against people like me. The neighborhood used the City of Austin to prevent these honorable and hardworking people from rezoning their property to CS based on their business need, then turned around and supported rezoning a big property next to theirs for CS-CO. **What is the logical reasoning behind this bias and unfair opposition and why are the city officials supporting them?**
- 11 During the last few months, I have submitted many legal documents to City staff and case manager Ms. Sherri Sirwaitis, to support my rezoning case # C14-2017-0042 and I ask that they now recommend my property be zoned for CS-MU with no restrictions which is very compatible with properties rezoned around my property along McNeil Drive, **but unfortunately, I am seeing history repeat itself.**

- 12 On Tuesday, May 30<sup>th</sup>, 2017, I had the chance to meet with case manager Ms. Sherri Sirwaitis, where she presented me with a zoning change review sheet which has been sent to Planning commission, Case# C14-2017-0042 Z.A.P. Date: June 6<sup>th</sup>, 2017.
- a) To my surprise June 6<sup>th</sup>, 2017 review sheet did not include or mention any of the documentation which presented my legal rights of the property. Yet again, they recommended the same LR-CO-MU land development code, **which I am strongly opposed to.**
  - b) Worth mentioning that finally, some of the document have been included in review zoning sheet, dated July 18<sup>th</sup>, 2017 by Ms. Sirwaitis (I appreciate that), for zoning and planning commission hearing.
  - c) On July 26<sup>th</sup>, 2017, I submitted more than 42 pages of documents to the case manager and requested to be included in zoning review sheet for August 15<sup>th</sup>, 2017 hearing, but she did not include any of them. **My question is, how can I get a fair hearing from the commissioners or City Council members without my documents to review? I hope those documents be included in Change review sheet for cit council hearing.**
- 13 In addition to the above recommendation by staff, which I am opposed to, the city transportation department has put new restrictions such as blocking access to McNeil Drive and taking additional ROW. This would place an undue financial hardship of more than \$1,000,000 in the long run on me and render the property unsuitable for any economically feasible use. I proposed a compromise to the ROW agreement of 50 feet from the center of McNeil Drive to the existing McNeil curb of the property, thus allowing me to preserve my existing city approved parking and drainage/overflow and allow the city and state to expand McNeil by another lane. (Worth mentioning that the city has already taken 10.5 feet ROW from my property). Despite numerous phone calls and emails and official mailings, there has not been a final resolution to my proposal. I am asking the city council for another postponement until I will be able to resolve these issues.

14 I have tried several times to correspond with the city staff and request a time to present my case to all staff, unfortunately my requests have been denied meeting all staff. **Per case manager Ms. Sherri Sirwaitis with her staff, their decision has been made based on my property is on an entrance street to the neighborhood.** However, there are many other properties along McNeil drive that are on entrances to a neighborhood that have been rezoned with a CS, GR or LI designation. Again, why have I been singled out with a LR-CO-MU recommendation? Which does not align with my business needs or compatible with facts on McNeil drive and make my make property viable for lease while others have CS, GR, LI. **Again, I would like the same fair rules applied to me and be shown equal opportunity on my legal right to my commercial property.** Please see the following examples proving my point that there are multiple properties along McNeil Dr. rezoned with a CS, GR, LI some of them located at the entrance of a neighborhoods:

- a) Corpus Christi Drive: 6748 or 6750 Corpus Christi Drive at the intersection of McNeil - This property was recently zoned as GR-CO at entrance of neighborhood, along with following streets.
- b) Dakota Ln.: 6410 McNeil Drive at the intersection of Dakota - This property was recently zoned as GR-CO.
- c) Within 200 feet of Blackfoot Trail: 6514 McNeil Drive- This property was zoned as CS-CO.
- d) Within 200 feet of my property and Blackfoot Trail: 6702 McNeil Drive - This property was zoned as W/L-CO
- e) 6810 McNeil Drive - This property was recently zoned as GR-CO.
- f) 6914 or McNeil Drive - of Los Indio's -This property is zoned as CS-CO.
- g) 7224 or 7308 McNeil Drive at the intersection of San Filipe - This property was recently zoned as GR-CO.
- h) 7701or 7318 McNeil Drive at the intersection of San Filipe - This property was zoned as GR-CO and CS-CO

- i) Along McNeil Drive and opposite side of my property, there are many properties which have been rezoned to LI, CS: BMW of Austin (CS zone), Building-A Taurus Academy CS-CO zone, Building-B Insurance CS-CO zone, Balcones Animal Hospital (LI-CO), Car Caliber Collision (Industrial), Foundation auto repair (Industrial), Lamb Auto (Industrial), Fashion Forms factory (LI zone), Ubox (LI zone), Glover Logistics (LI zone), SabRex (LI zone), Megladon (LI zone), and Research park including many companies that are all (LI zone).
- j) 6813 McNeil Drive was zoned LI
- k) 6819 McNeil Drive was zoned LI
- l) 6909 McNeil was zoned CS
- m) 7111 McNeil Drive was zoned CS
- n) 7113 McNeil Drive was zoned CS
- o) Finally, there are many properties zoned LI, LI-CO, CS or CS-CO, GR and GR-CO along and down McNeil Drive. [Please see page 25 zoning map of Austin.](#)
- p) **Note: Please as you see, City of Austin Staff's recommendation is NOT based with facts on the ground. If there is any exception to the rule, I want it applied to me as well based on equal opportunity and my legal right to my commercial property.**
- q) On August 15<sup>th</sup>, 2017, during Planning commission hearing, the planning commissioners has recommended GR\_MU\_CO for portion of the Lot2, although this is a step in right direction and I appreciate that, but unfortunately, again my small lot has been divided in two separate tracts by planning commission recommendation and tract1 stayed as SF2. This creates a major issue to operate any valuable business at this location due to lack of space.
- r) There is another main issue here, based on the city staff recommendation, if rezoning granted, then new ROW of 57 feet from

center McNeil drive will apply to the property. As a result, I will lose half of my parking space, part of my filtration-sedimentation-detention ponds and must move my existing commercial building back 7 more feet to comply with this condition. This makes my existing commercial building too small to operate any valuable business.

- s) I am asking the honorable city council members to be fair and support the rezoning of the entirety of Lot 2 in Indian Oakes 2 subdivision to GR/CS. I do have adjacent property 12604 Blackfoot on North side the property. This property can be used as barrier between commercial lot and the neighborhood.
- 15 I am a Mechanical engineer with many years of experience in equipment repair, modify, maintenance and sales. The machines that I have experienced on are like appliances that you will find in any home, just a little more precise and smaller. Although I am 69 years old now, I would like to use my equipment background and run a small business on part of my property offering those types of services, but the LR-CO-MU staff recommendation **does not** allow me to open anything in my field. This would include repair and services, such as AC, Auto, electronic prototype assembly, equipment testing, equipment repair, service, training and equipment sales all prohibited under the LR-CO code. **The CS-MU land development codes would allow me to run my business from my property**
- 16 Please see following Austin zoning maps, legal documents and pictures of properties along McNeil Dr. for support of CS-MU or CS/GR-MU zoning of my property. [Please see page 25 zoning Map.](#)

Sincerely,

Abraham Birgani  
Phone # 512-998-2525





**Legal document dated April 29<sup>th</sup> 1985-Lawfully property is commercial**AMENDMENT OF RESTRICTIONS

Vol 1186

18833

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF WILLIAMSON

§

WHEREAS, by Deed recorded in Volume 500, Page 496, of the Deed Records of Williamson County, Texas, a copy of which is attached hereto as Exhibit "A", RAYMOND FLOYD DAVIS and wife, ALINE DAVIS, and BEULAH DAVIS, as Grantors, did convey to ROSCOE E. MILLEGAN and wife, ANNIE MILLEGAN, as Grantees, those six (6) tracts of land situated in Williamson County, Texas, as are more fully described on Exhibit "A"; and

WHEREAS, BEULAH DAVIS is now deceased and DIANA EICHSTATDT, joined herein by her husband, DONALD L. EICHSTATDT, is her only heir; and

WHEREAS, ELAINE BARNES, wife of DALE BARNES, is now deceased; and

WHEREAS, RICHARD BOUTON and wife, DIANE BOUTON, CRAIG H. SHERPERT and wife, BARBARA SHERPERT, DALE BARNES and FRANK C. WOLCHICK, JR., are successors in title to portions of the hereinabove referenced property; and

WHEREAS, the above named MILLEGANS, BOUTONS, BARNES, SHERPERTS and WOLCHICK constitute all of the parties with any interest in and to the property described on Exhibit "A"; and

WHEREAS, the Deed attached as Exhibit "A" contains certain restrictions restricting the use of the property for residential purposes only, and the parties hereto now desire to amend said restrictions to permit any lawful use;

NOW THEREFORE, for and in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree that the restrictions imposed upon the property are hereby amended and modified to provide that the property is no longer restricted to use for residential purposes only and may be used for any lawful purpose.

EXECUTED this 29<sup>th</sup> day of April, 1985.

ROSCOE E. MILLEGAN  
ROSCOE E. MILLEGAN

ANNIE MILLEGAN  
ANNIE MILLEGAN

DIANA EICHSTATDT  
DIANA EICHSTATDT

DONALD L. EICHSTATDT  
DONALD L. EICHSTATDT

RICHARD BOUTON  
RICHARD BOUTON

DIANE BOUTON  
DIANE BOUTON

CRAIG H. SHERPERT  
CRAIG H. SHERPERT

BARBARA J. SHERPERT  
BARBARA J. SHERPERT

FRANK C. WOLCHICK, JR.  
FRANK C. WOLCHICK, JR.

DALE BARNES  
DALE BARNES

STATE OF TEXAS

§

COUNTY OF TEXAS

§

This instrument was acknowledged before me on APRIL 29, 1985, by

**Legal document dated: September 29<sup>th</sup> 1989-Removal of Building line**

On 10-23-1989, building lines on Lots 2, 3, and 4 of Indian Oakes 2 Subdivision was corrected and after this correction, I purchased the lot2 for developing it for commercial use.

[illegible]

COUNTY CLERK  
TRAVIS COUNTY, TEXAS



**Picture of Commercial Building which built during-1990-1993**



**Below Tax ID for A-Mart Enterprises**

5#11811X3  
EX11811X3

**Merchants: DO NOT** accept a copy of this permit in place of a resale or exemption certificate. You will be responsible for sales tax unless you have a valid resale/exemption certificate on file.

**ABRAHAM A BIGANI**  
TAXPAYER NAME, TITLE, PHONE AND PHYSICAL LOCATION

**A-MART ENTERPRISES**  
12602 BLACKFOOT TRL  
AUSTIN

**TX 78729**

**SIC CODE: 5713** **DESCRIPTION ON NEXT LINE:**  
Floor Covering Stores

**WE SHOW THIS BUSINESS IN THE FOLLOWING LOCAL SALES TAX JURISDICTIONS:**  
TRANSIT: AUSTIN MTA

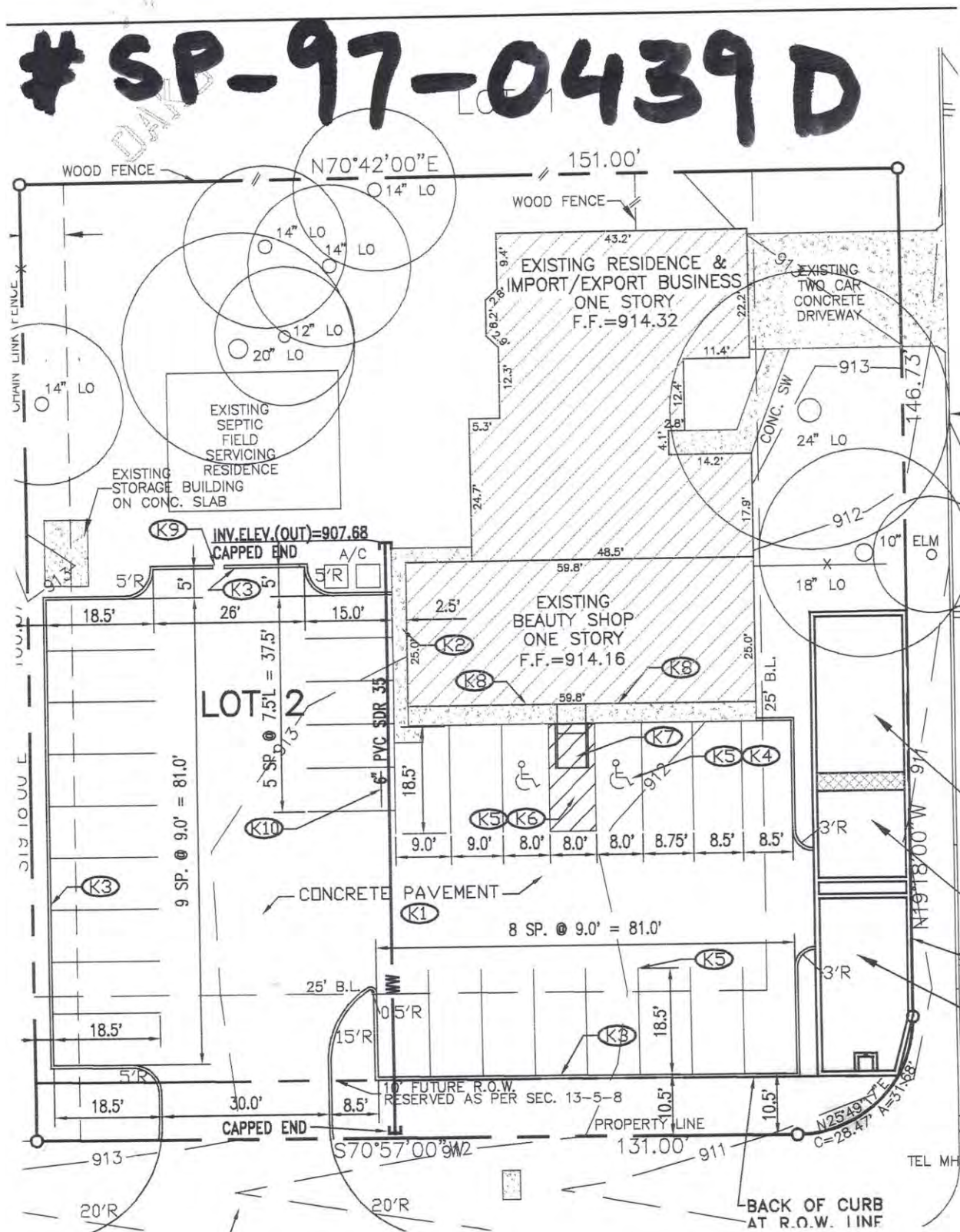
**EFF: 05/01/1997**

**YOU MAY NEED TO COLLECT SALES AND/OR USE TAX FOR OTHER LOCAL TAXING AUTHORITIES DEPENDING ON YOUR TYPE OF BUSINESS.**  
If you have any questions regarding sales tax, you may contact the Texas State Comptroller's field office in your area or call 1-800-255-5555, toll free, nationwide. The Austin number is 512/463-4000. If you are calling from a Telecommunications Device for the Deaf (TDD), the toll free number is 1-800-248-4000, or in Austin, 512/463-4621.

**John Sharp**  
JOHN SHARP  
Comptroller of Public Accounts

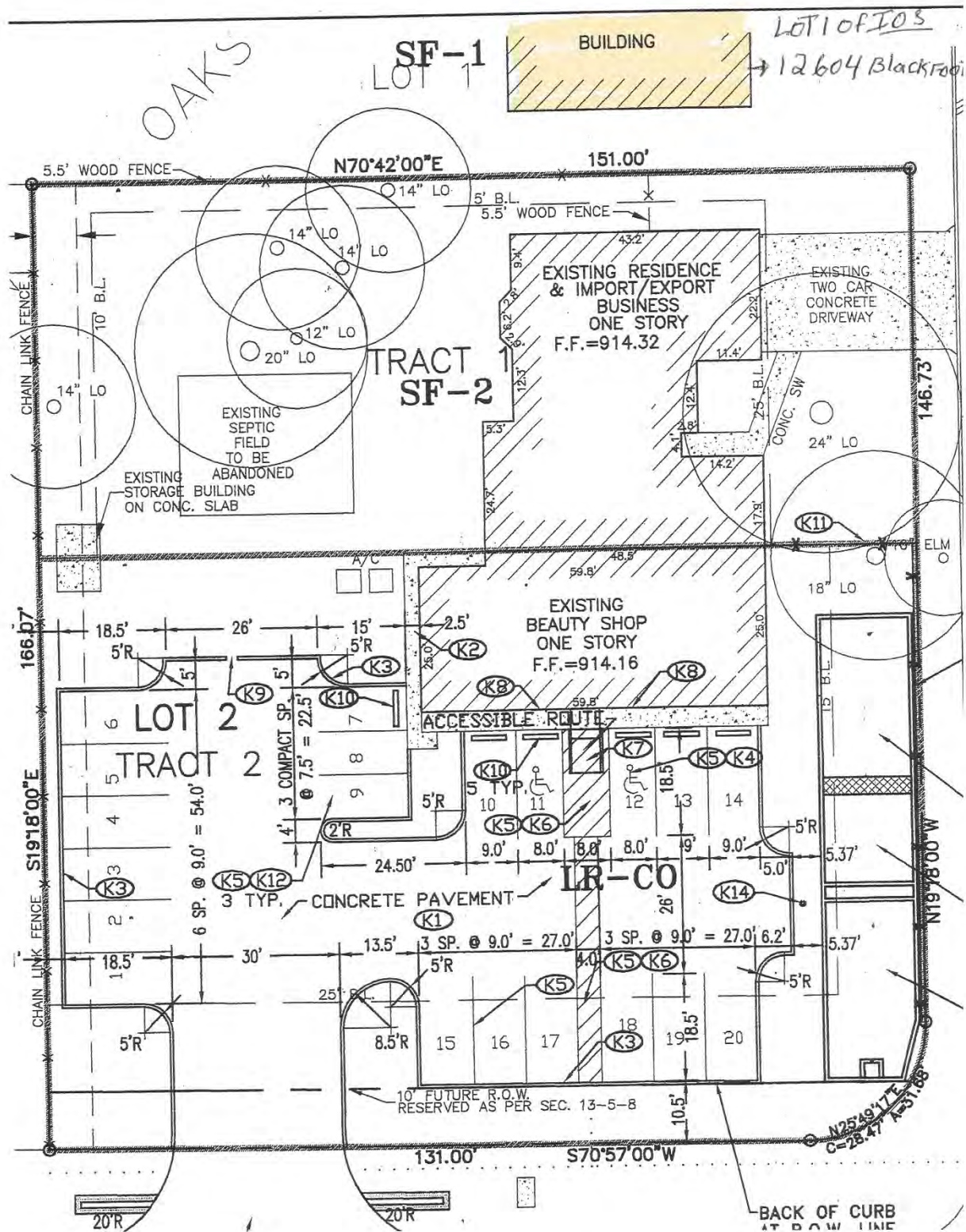
Type of Permit		SALES AND USE TAX	
Exempt number	2-164-43-4820-3	Exempt number	00002
Exempt number	00002	Exempt number	00002
First business date	05/01/1997	First business date	05/01/1997







**See approved Site plan permit # SP-99-2171Cplan after annexation**



## **Below see Ms. Rhonda Paver removal of their formal opposition**



June 1, 2017

**AUSTIN, TX:**

1710 Richcreek Rd. 78757  
8419 Bowling Green Dr. 78757  
8121 Shoal Creek Blvd. 78757  
6616 McNeil Dr. 78729  
9914 Woodland Village Dr. 78750  
12301 Hymeadow Dr. 78750  
7700 West Parmer Ln. 78729  
2001 Wells Branch Pkwy. 78728  
1007 E. 40th St. 78751  
9405 Brodie Ln. 78748  
9325 Alice Mae Ln. 78748

**LEANDER, TX:**

225 Block House Dr. 78641

**KYLE, TX:**

4624 Ratcliffe Dr. 78640  
1020 Lightfoot St. 78640

**ROUND ROCK, TX:**

7601 O'Connor Dr. 78681  
2301 N. A.W. Grimes Blvd. 78665  
651 Teravista Pkwy. 78665

**COLLEGE STATION, TX:**

900 University Oaks Blvd. 77840  
205 Rock Prairie Rd. 77845

**ADMINISTRATIVE OFFICE:**

1910 Justin Ln. 78757  
(512) 459-0258  
Fax (512) 467-1824

[www.SteppingStoneSchool.com](http://www.SteppingStoneSchool.com)

Planning & Zoning Dept.  
c/o Ms. Sherri Sirwaitis -- Case Manager  
505 Barton Springs Rd.  
Austin, TX 78704

Re: Case Number: 2017-042740 ZC or C14-2017-0042; Zoning/Rezoning

Dear Ms. Sirwaitis,

After discussions with the property owner, Mr. Birgani, where he indicated he would not seek a zoning classification that allows for the sale of alcohol, we withdraw our formal opposition to the pending application.

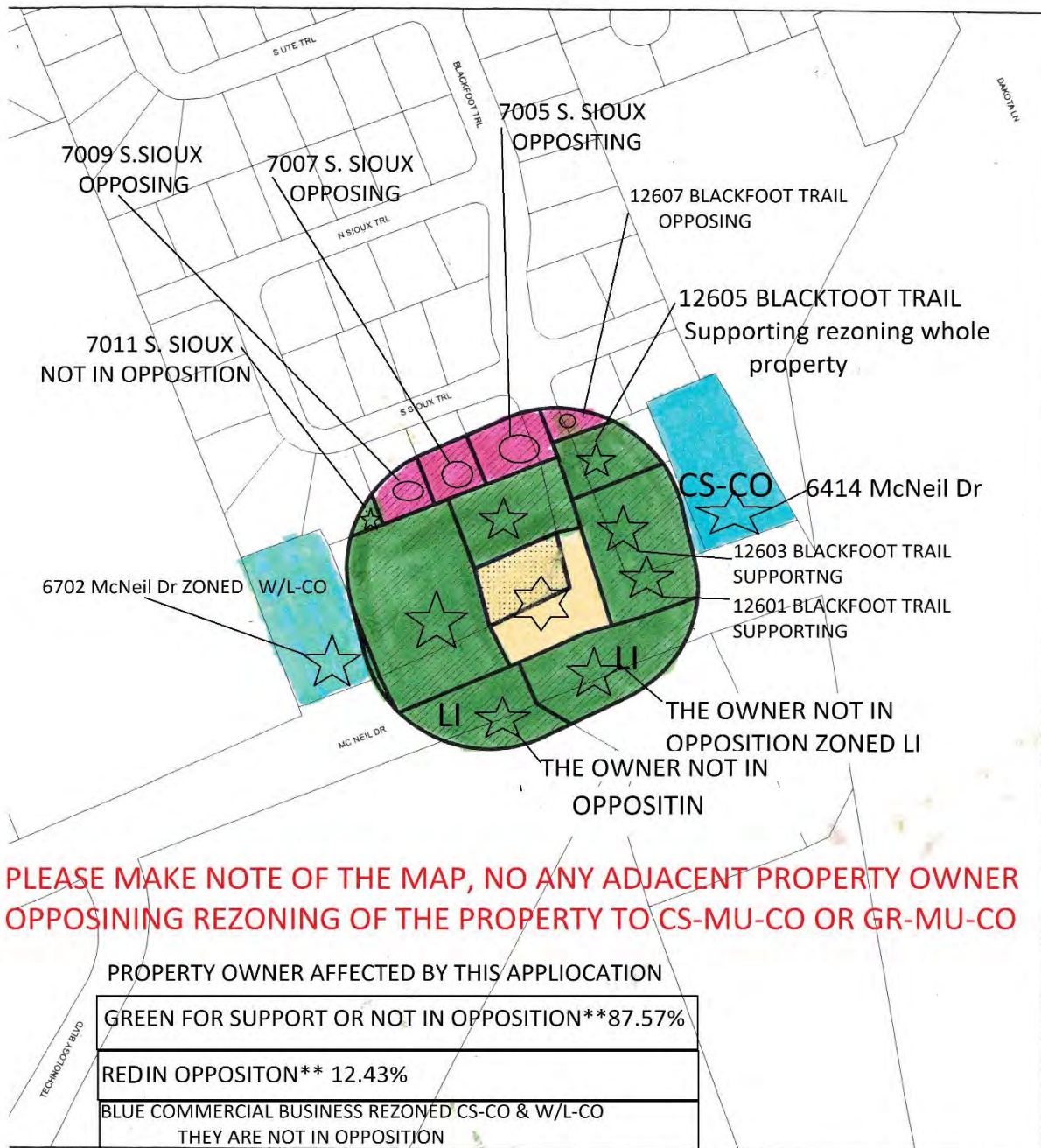
If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Rhonda Paver'.

Rhonda Paver

## **NO Adjacent property owner opposition to Rezoning to this property**



" = 200'

- BUFFER
- PROPERTY\_OWNER
- SUBJECT\_TRACT

### PETITION

CASE#: C14-2017-0042

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.





## No Valid Petition

Case Number:  
**C14-2017-0042**

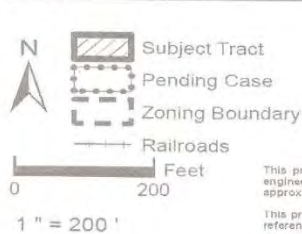
### PETITION

Date: 6/5/2017  
Total Square Footage of Buffer: 219055.5379  
Percentage of Square Footage Owned by Petitioners Within Buffer: 12.43%

Calculation: The total square footage is calculated by taking the sum of the area of all TCAD Parcels with valid signatures including one-half of the adjacent right-of-way that fall within 200 feet of the subject tract. Parcels that do not fall within the 200 foot buffer are not used for calculation. When a parcel intersects the edge of the buffer, only the portion of the parcel that falls within the buffer is used. The area of the buffer does not include the subject tract.

TCAD ID	Address	Owner	Signature	Petition Area	Percent
R322530	6702 MCNEIL DR    [AUSTINTX78729	6702 MCNEIL LTD	no	1131.25	0.00%
R065469	12502 BLACKFOOT TRL    [AUSTINTX78729-7703	BIRGANI ABRAHAM	no	21045.84	0.00%
R065374	7005 S SIOUX TRL    [AUSTINTX78729-7742	FEHR E SCOTT	yes	10462.69	4.78%
R065372	7005 S SIOUX TRL    [AUSTINTX78729	GALAVIZ ABEL & MARIA R (LE) & REVOCABLE LIVING TRUST	yes	6075.02	2.77%
R065371	7011 S SIOUX TRL    [AUSTINTX78729-7742	JACKSON JANIE S & ROBERT	no	1597.14	0.00%
R322627	1910 JUSTIN LN    [AUSTINTX78757-2492	PAVER FAMILY ENTERPRISES LP	no	55440.53	0.00%
R065560	% PS BUSINESS PARKS INC Attn: Assistant Vice President-A/D701 WESTERN AVE GLENDALE CA 91201	PS BUSINESS PARKS LP	no	20336.50	0.00%
R405452	ATTN: BRIAN HURLEY% HRPT PROPERTIES TRUST 9 GALEN ST STE 400 WATERTOWN MA 02472-4522	RESEARCH PARK PROP TRUST	no	28823.08	0.00%
R065362	12607 BLACKFOOT TRL    [AUSTINTX78729-7704	ROBERTS DAVID ALAN & PAMELA JO	yes	3577.07	1.63%
R065364	12605 BLACKFOOT TRL    [AUSTINTX78729	SIEBELINK DAVID & ROBIN F	no	12362.90	0.00%
R065373	7006 S SIOUX TRL    [AUSTINTX78729-7741	TRENHOLM JOHN D & LINDA	yes	7121.81	3.25%
R065365	12603 BLACKFOOT TRL    [AUSTINTX78729-7704	ZARCHI MEHDI & ELHAM TARKASHVAND	no	33718.09	0.00%
<b>Total</b>				<b>201691.93</b>	<b>12.43%</b>

**Please see below case#C14-98-0060 zoned CS-CO**



**ZONING**  
Case#: C14-2017-0042

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning and Zoning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



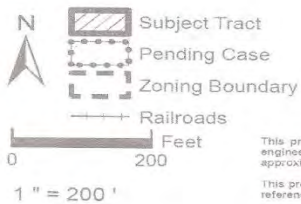
Created: 4/19/2017

Please see Below case# C14-2011-0046 zoned W/LO-CO



### ZONING

Case#: C14-2017-0042



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Created: 4/19/2017

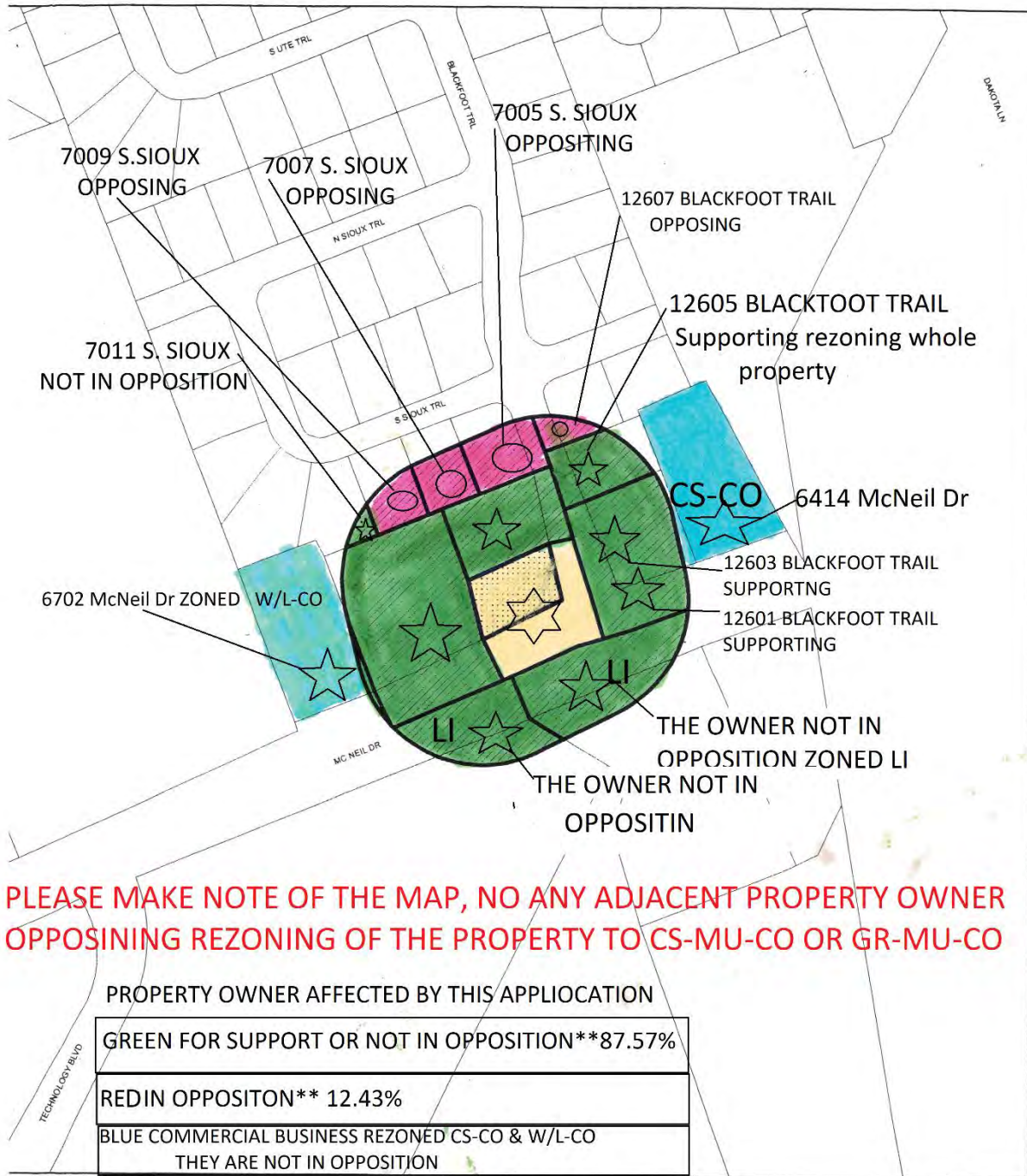


## Zoning Map Of 5 entrances to Neighborhoods From McNeil Dr.

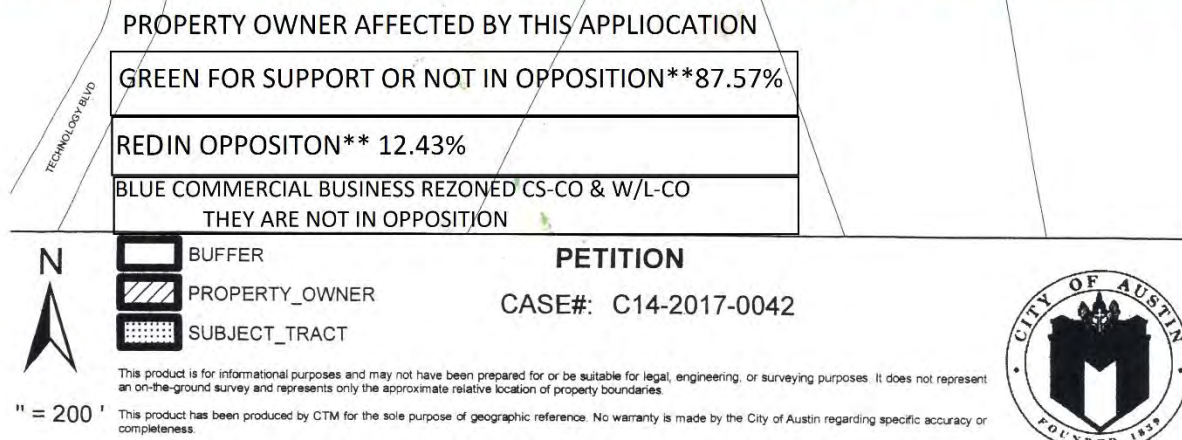




## NO ADJACENT PROPERTY OWNER IN OPPOSITION OF ZONING WHOLE LOT-2



**PLEASE MAKE NOTE OF THE MAP, NO ANY ADJACENT PROPERTY OWNER OPPOSING REZONING OF THE PROPERTY TO CS-MU-CO OR GR-MU-CO**



























Above picture of my property case # C14-2017-0024





























































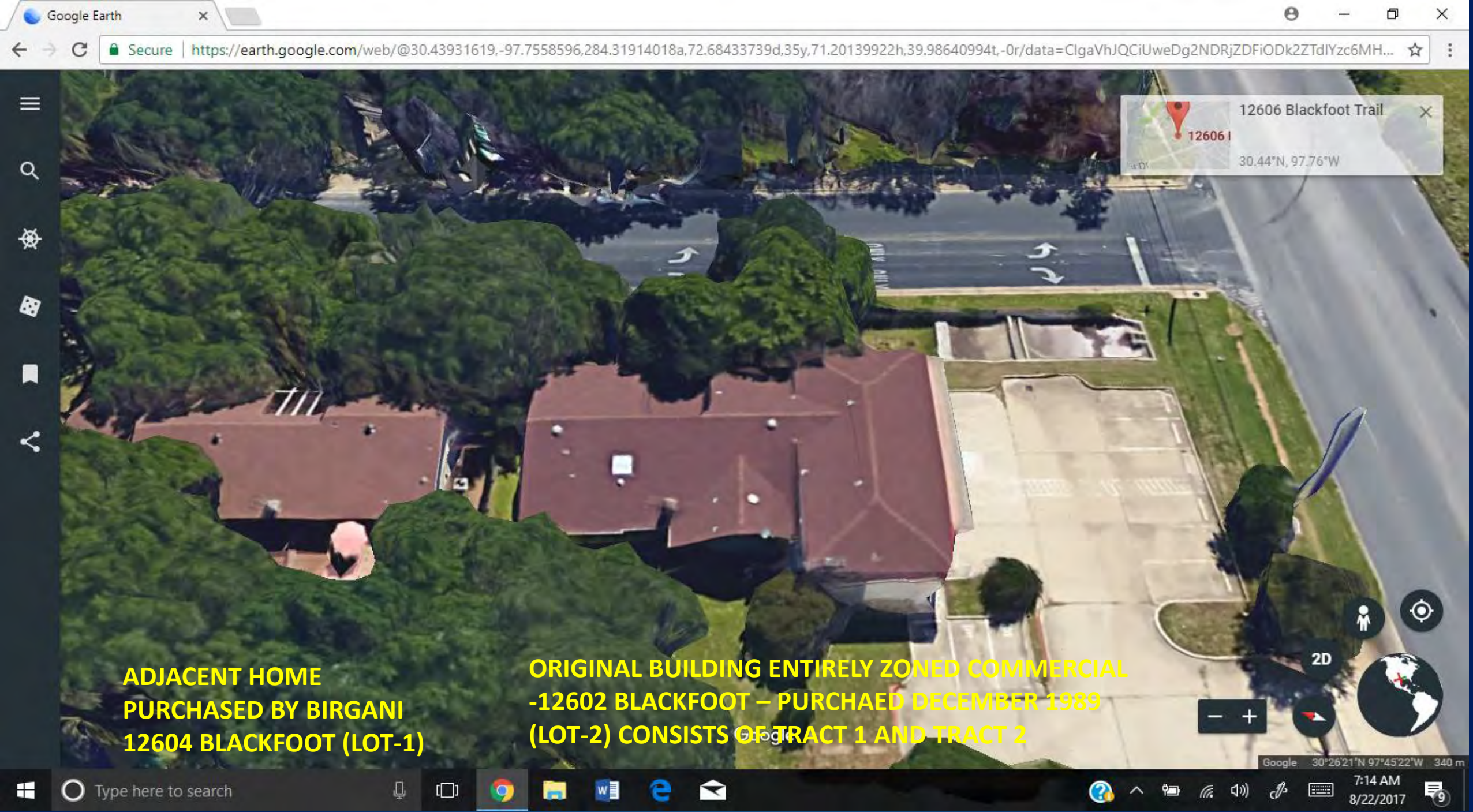






# **Rezoning Application of Abraham Birgani**

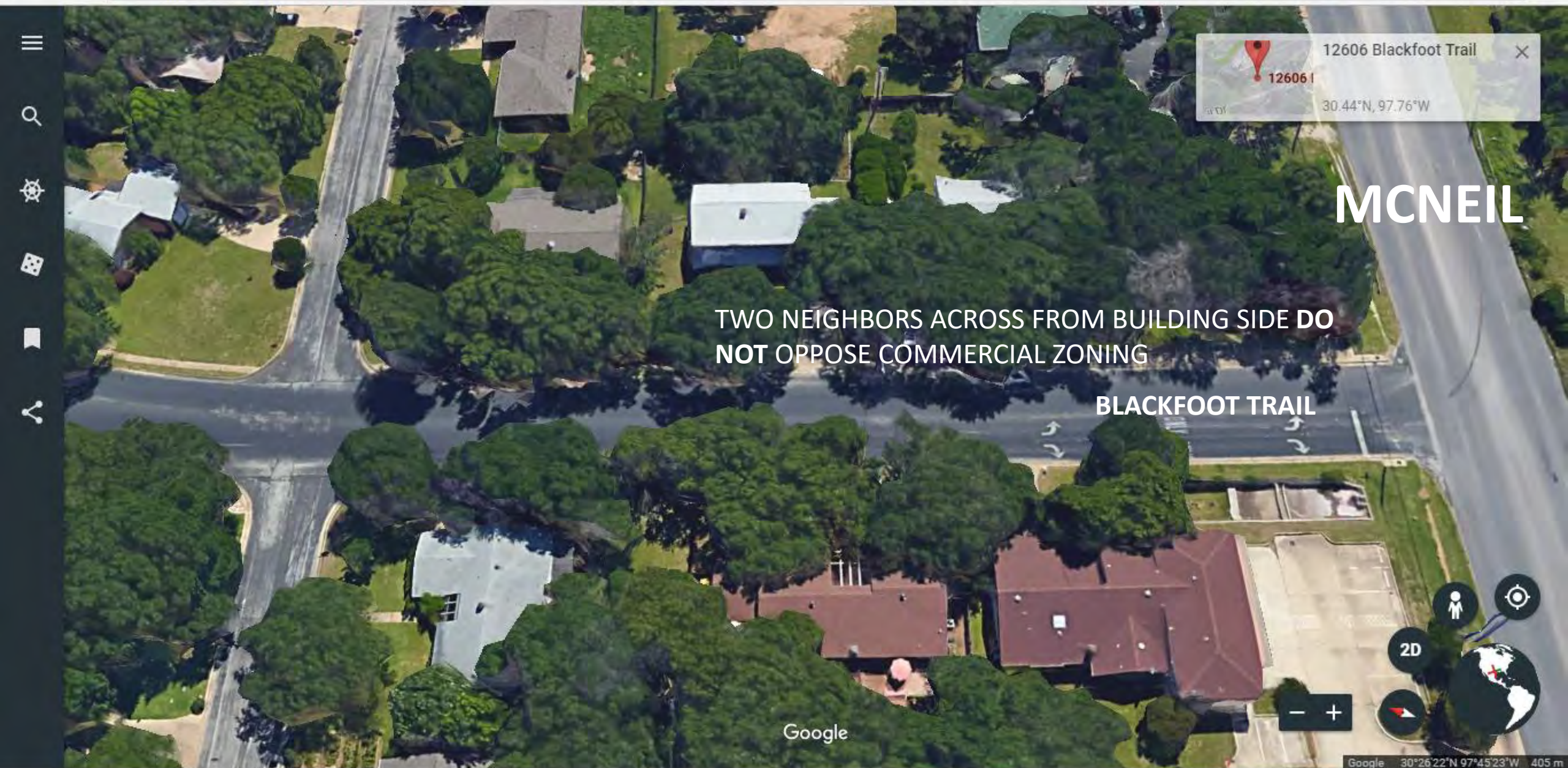
**Case No.: C14-2017-0042  
6610 McNeil Road/  
12602 Blackfoot Trail**



**ADJACENT HOME  
PURCHASED BY BIRGANI  
12604 BLACKFOOT (LOT-1)**

**ORIGINAL BUILDING ENTIRELY ZONED COMMERCIAL  
-12602 BLACKFOOT – PURCHASED DECEMBER 1989  
(LOT-2) CONSISTS OF TRACT 1 AND TRACT 2**





12606 Blackfoot Trail

12606 I

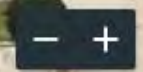
30.44°N, 97.76°W

MCNEIL

TWO NEIGHBORS ACROSS FROM BUILDING SIDE DO  
NOT OPPOSE COMMERCIAL ZONING

BLACKFOOT TRAIL

Google



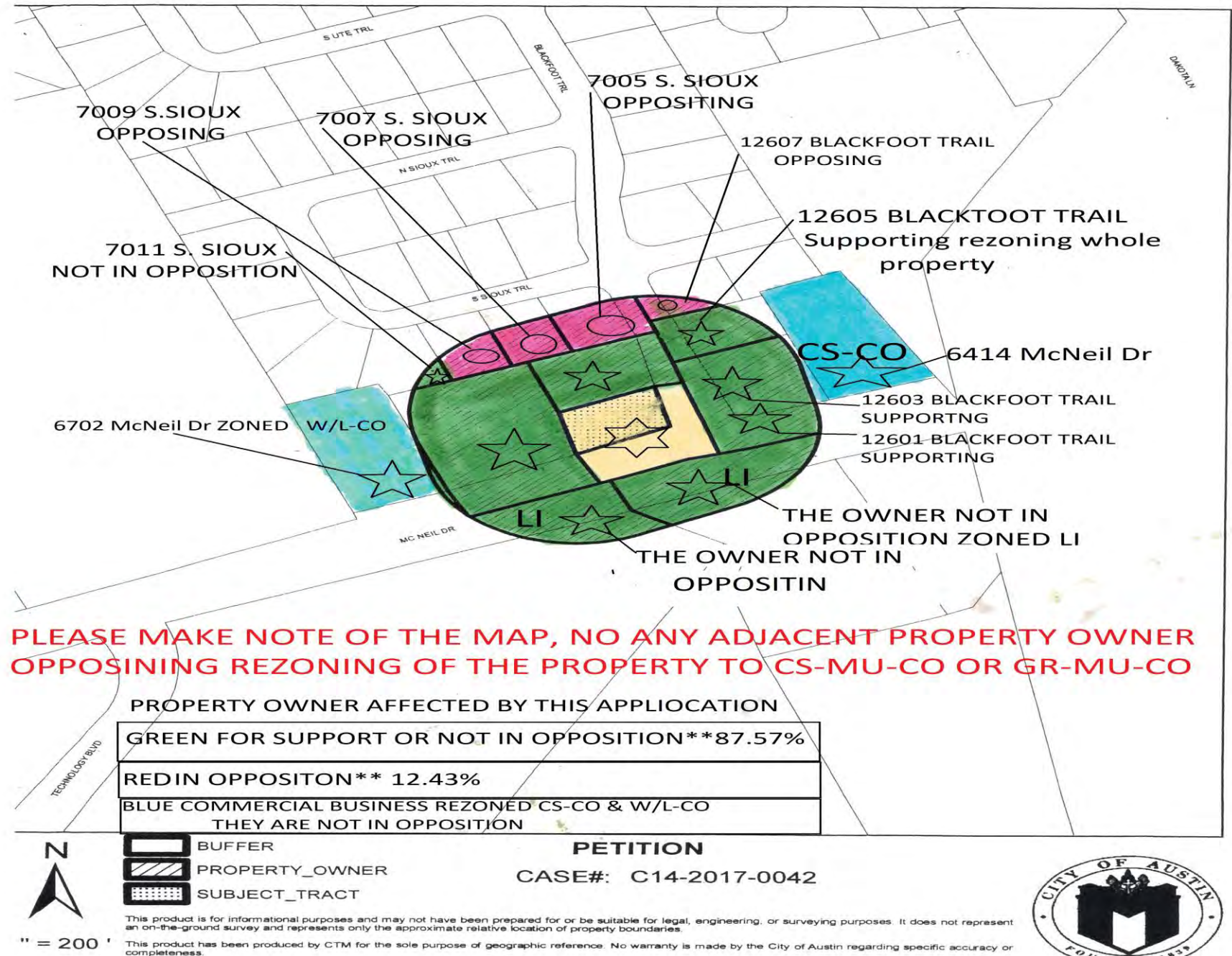


[illegible]

3267



PLEASE MAKE NOTE,  
 NO ANY ADJACENT  
 PROPERTY OWNER  
 ADJACENT TO THE  
 SUBJECT PROPERTY  
 (CASE# C14-2017-  
 0042) ARE IN  
 OPPOSITON TO  
 ZONING ALL THE  
 PROPETY TO **CS-MU-  
 CO OR-MU-CO**



- **Property consists of one building, the front part facing McNeil and side extending onto Blackfoot Trail located in Williamson County and has been commercialized since 1985**
- **When purchased in December 1989, it was zoned entirely commercial until the City of Austin annexed it in 1997**
- **Prior to annexation, Mr. Birgani had all the permits and Austin city approved site plan, consisting of elaborate drainage structure and parking lot— permit #SP-97-0439D**
- **Unbeknownst to Mr. Birgani, city zoned entire property SF-1 (residential), and red-tagged his entire business, stopped construction, revoked all his permits and approved site plan**



**Faced with tremendous financial loss, Mr. Birgani was compelled to enter an onerous zoning agreement with city:**

- 1. City drew artificial property line through part of building and forced him to submit another site plan which was approved 2.5 years later - (The site plan No. SP-99-2171C)**
- 2. Zoned front portion (1416 square feet) as LR-CO and imposed with impossible conditions in restrictive covenant (also in Ordinance No. 990722-46), PROHIBITING:**

- a. Consumer Convenience Services**
- b. Food Sales**
- c. General Retail Sales**
- d. Bed and Breakfast**
- e. Restaurant**
- f. Congregate Living**
- g. Community Recreation**
- h. Guidance Services**
- i. Residential Treatment**
- j. Consumer Repair Services**
- k. General Retail Sales (Convenience)**
- l. Pet Services**
- m. Restaurant (Drive-In, Fast Food)**
- n. Service Station**
- o. Community Recreation (Private)**
- p. Counseling Services**
- q. Hospital Services**



**The most onerous restriction imposed “hours-of-operation restriction:**

- ❖ **Monday through Friday 8:00 a.m. until 8:00 p.m.**
- ❖ **Saturdays – 8:00 a.m. until 12:00 noon**
- ❖ **Sunday- CLOSED**

**Due to such restrictions, it remained vacant for 14 of 20 past years.**





**DRAINAGE SYSTEM CONSTRUCTED AT APPROXIMATE COST OF  
\$300,000.00**





**SIDE VIEW FROM BLACKFOOT – 6-FOOT FENCE WITH DRAINAGE  
SYSTEM BEHIND MAKES BLACKFOOT ACCESS IMPOSSIBLE**



# PLANNING AND ZONING RECOMMEDATION – AUGUST 15TH

- ❖ MAINTAINED ARTIFICIAL DIVISION OF BUILDING AND REZONED BACK HALF OF BUILDING AS SF-(RESIDENTIAL)
- ❖ REZONED FRONT PORTION OF BUILDING FACING McNeill (1416 SQAURE FEET) AS GR-MU-CO WITH OVERLAY CONDITIONS PROHIBITING:
  1. Prohibit Alternative Financial Services
  2. Automotive Washing (of any type)
  3. Bail Bond Services
  4. Drop-Off Recycling Collection Facility,
  5. Medical Office-exceeding 5,000 sq. ft. gross floor area
  6. Medical Offices-not exceeding 5,000 sq. ft. gross floor area,
  7. Outdoor Entertainment
  8. Pawn Shop Services



9. Service Station,
10. Congregate Living
11. Guidance Services
12. Hospital Services (General),
13. Hospital Services (Limited),
14. Residential Treatment and Drive-In Services
15. maintain the condition from Ordinance No. 9907722-46 that,  
“Pedestrian and vehicular traffic associated with a non-residential use  
on the Property may not access Blackfoot Trail.”

(7-0, D. Breithaupt, B. Evans, S. Lavani and S. Trinh-absent); J. Duncan-  
1<sup>st</sup>, A. Aguirre-2<sup>nd</sup>.

❖ MR. BIRGANI ABSOLUTLEY AGREES THAT THERE WILL BE NO ACCESS FROM BLACKFOOT BECAUSE:

1. IT WOULD IMPEDE TRAFFIC FLOW ON BLACKFOOT AND IS NOT CONSISTANT WITH NEIGHBORHOOD

2. IT IS PHYSICALL IMPOSSIBLE DUE TO DRAINAGE SYSTEM



# CURRENT RECOMMENDATION STILL MAKES PROPERTY COMMERICALLY UNFEASIBLE

- RESTRICTIONS ON MEDICAL OFFICES, PAWN SHOPS, AND  
ALTERNATIVE FINANCIAL SERVICES
- LIMITING COMMERCIAL ENTERPRISE TO 1416 SQUARE FEET MAKES  
PROPERTY UNPROFITABLE AND RENDERS VALUE OF PROPERTY  
PRACTICALLY WORTHLESS AS COMMERCIAL PROPERTY
- **THE FOLLOWING FINANCIAL ANALYSIS  
SUPPORTS THAT CONCLUSION:**

**\*\*\*ADDITIONAL RIGHT-OF-WAY REQUIRED  
FOR ZONING CHANGE –  
7 MORE FEET FROM FRONT\*\*\***

- Zoning Change Review Sheet - August 15, 2017 provides: “In addition, if the requested zoning change is granted, then 57 feet of right-of-way should be dedicated from the existing centerline of McNeil Drive to accommodate the required ROW for a Major Arterial Divided 4-lane roadway at 114 feet.”
- This provision was superseded by the ATD Memorandum of July 26, 2017, that provided in part: “. . .the Director has determined that the right-of-way dedication is deferred site plan.”



**IN EVENT THAT MR. BRIGANI SUBMITS NEW SITE PLAN  
CITY CAN IMPOSE RIGHT-OF-WAY CONDITION OF 57  
FEET WHICH WILL CAUSE FOLLOWING PROBLEMS:**

- 1. Reducing the square footage of existing commercially zoned property by (2,625 square feet)**
- 2. Moving building, filtration-sedimentation-detention ponds and parking lot 7 feet or more back will reduce building space by another 420 square feet**
- 3. Reconstruction cost of above will cost at least \$450,000 or more**

# MR. BIRGANI SUFFERS A PROFIT LOSS UNDER CURRENT RECOMMENDATION WITH IMPOSITION OF RIGHT-OF-WAY

GROSS RENTAL INCOME ON NOW 930 SQUARE FEET (at \$1.75 per square foot per month based upon data from commercial realtor)

**\$19,530.00**

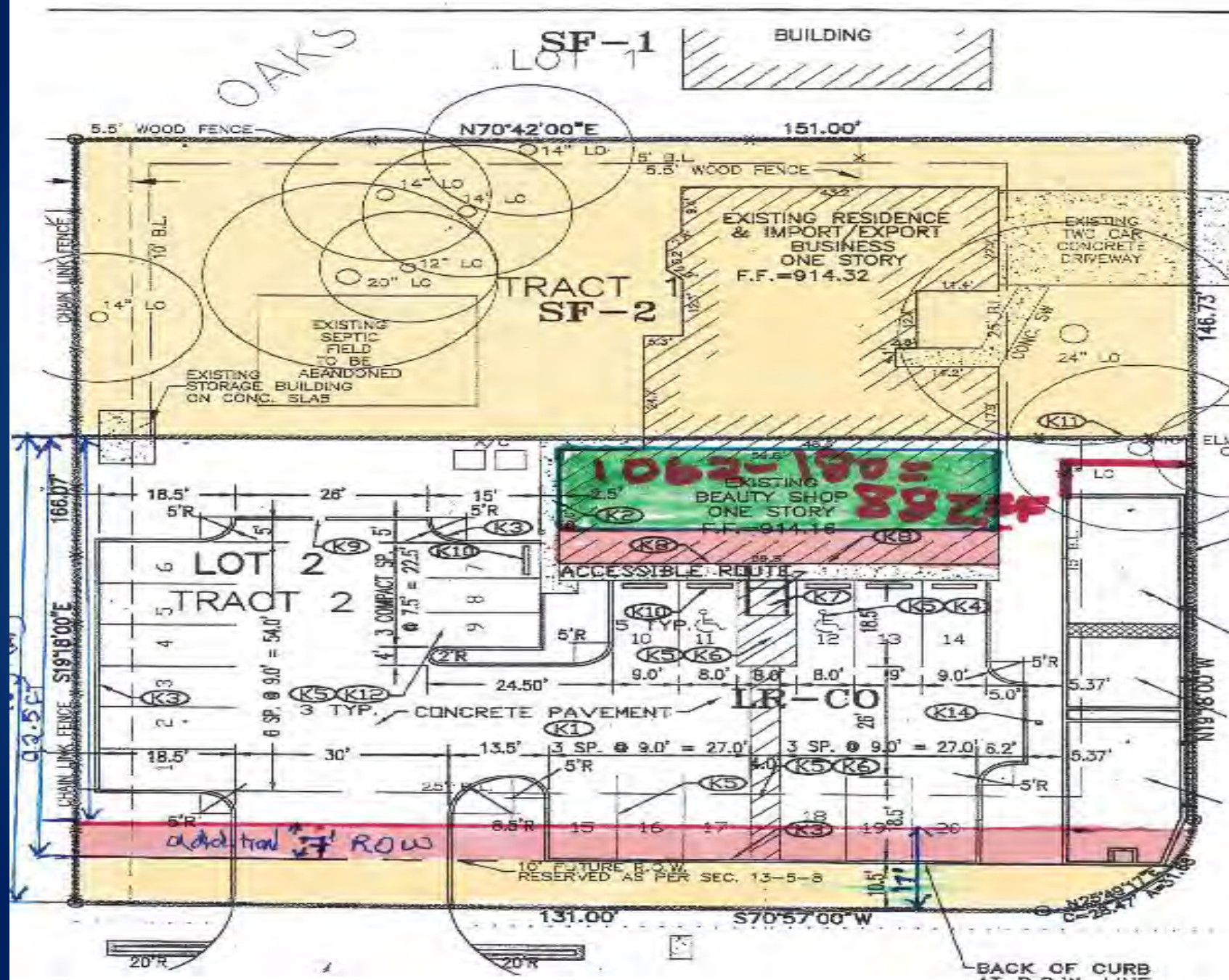
GROSS EXPENSES:

**\$19,729.00**

PROFIT

**MINUS -\$199.00**





UNDER CURRENT RECOMMENDATION  
*(WITHOUT RIGHT-OF-WAY)* --- MR. BRIGANI'S MINIMAL  
PROFIT RENDERS PROPERTY COMMERCIALY UNFEASIBLE

GROSS RENTAL INCOME ON 1416 SQUARE FEET (at \$1.75 per square foot  
based upon data from commercial realtor)

**\$29,736.00**

GROSS EXPENSES:

**\$19,729.00**

PROFIT

**\$10,007.00**



# BY EXTENDING THE GR-MU-CO INTO ALL BUT THE BACK 30 FEET OF THE PORTION OF THE BUILDING ZONED SF-2, MR. BRIGANI BEGINS TO MAKE PROPERTY PROFITABLE

GROSS RENTAL INCOME ON WITH EXTENDING GR-MU-CO 2,580 SQUARE FEET (at \$1.75 per square foot based upon data from commercial realtor)

**\$54,180.00**

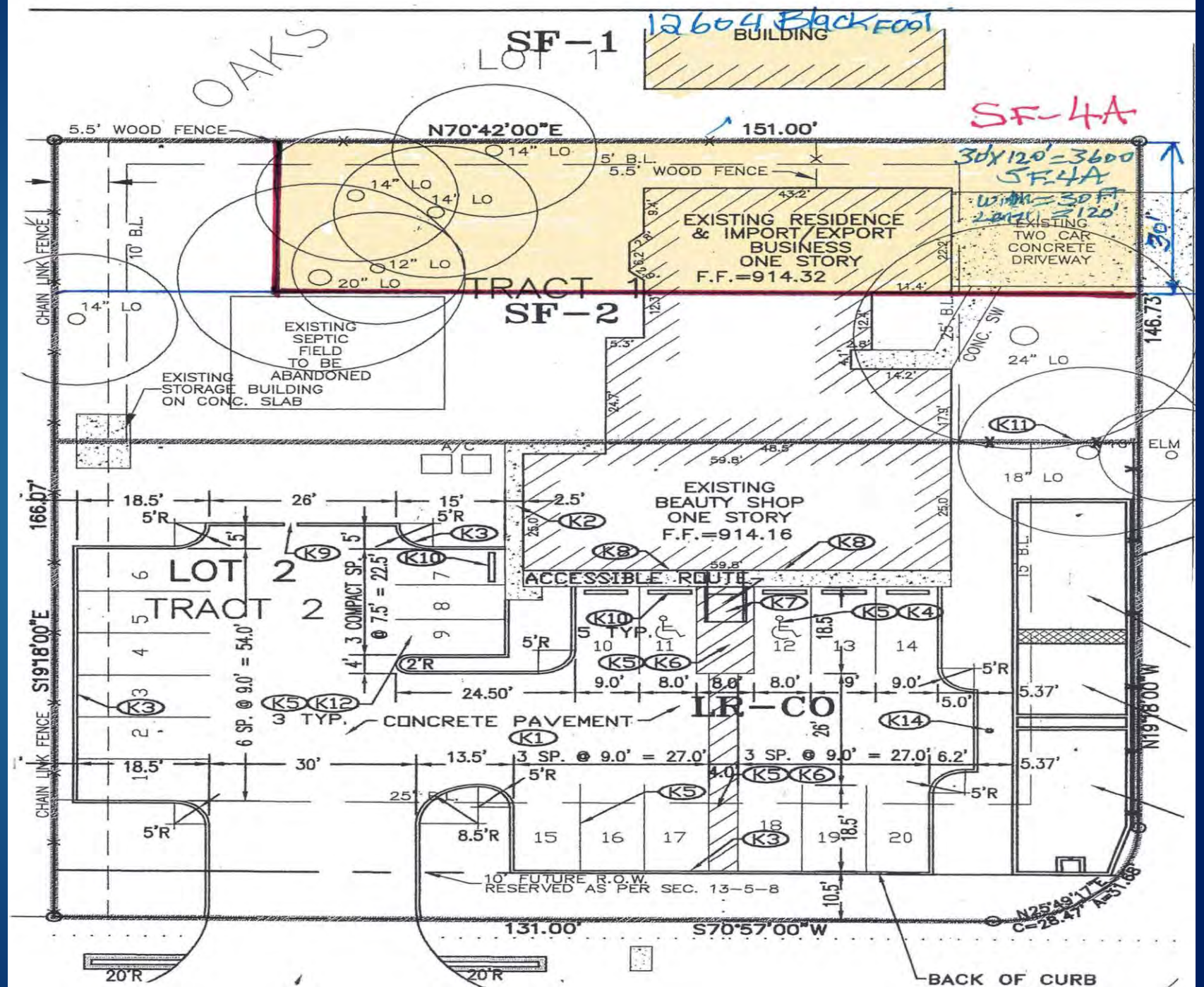
GROSS EXPENSES:

**\$22,000.00**

PROFIT

**\$32,180.00**

**SF-4A SMALL  
LOT MINIMUM  
OF 3,600 BY  
EITHER A 30' X  
120' OR A 40' X  
90' SQUARE FEET  
BUFFER.**





# BY EXTENDING THE GR-MU-CO INTO ALL OF THE PORTION OF THE BUILDING ZONED SF-2, MR. BRIGANI PROPERTY WOULD BE PROFITABLE

GROSS RENTAL INCOME ON 3526 SQUARE FEET (at \$1.75 per square foot  
based upon data from commercial realtor)

**\$74,046.00**

GROSS EXPENSES:

**\$20,000.00**

PROFIT

**\$43,760.00**

# IN THE EVENT THAT CITY EXTENDS GR-MU-CO INTO SOME OR ALL OF BACK PORTION OF BUILDING FACING BLACKFOOT

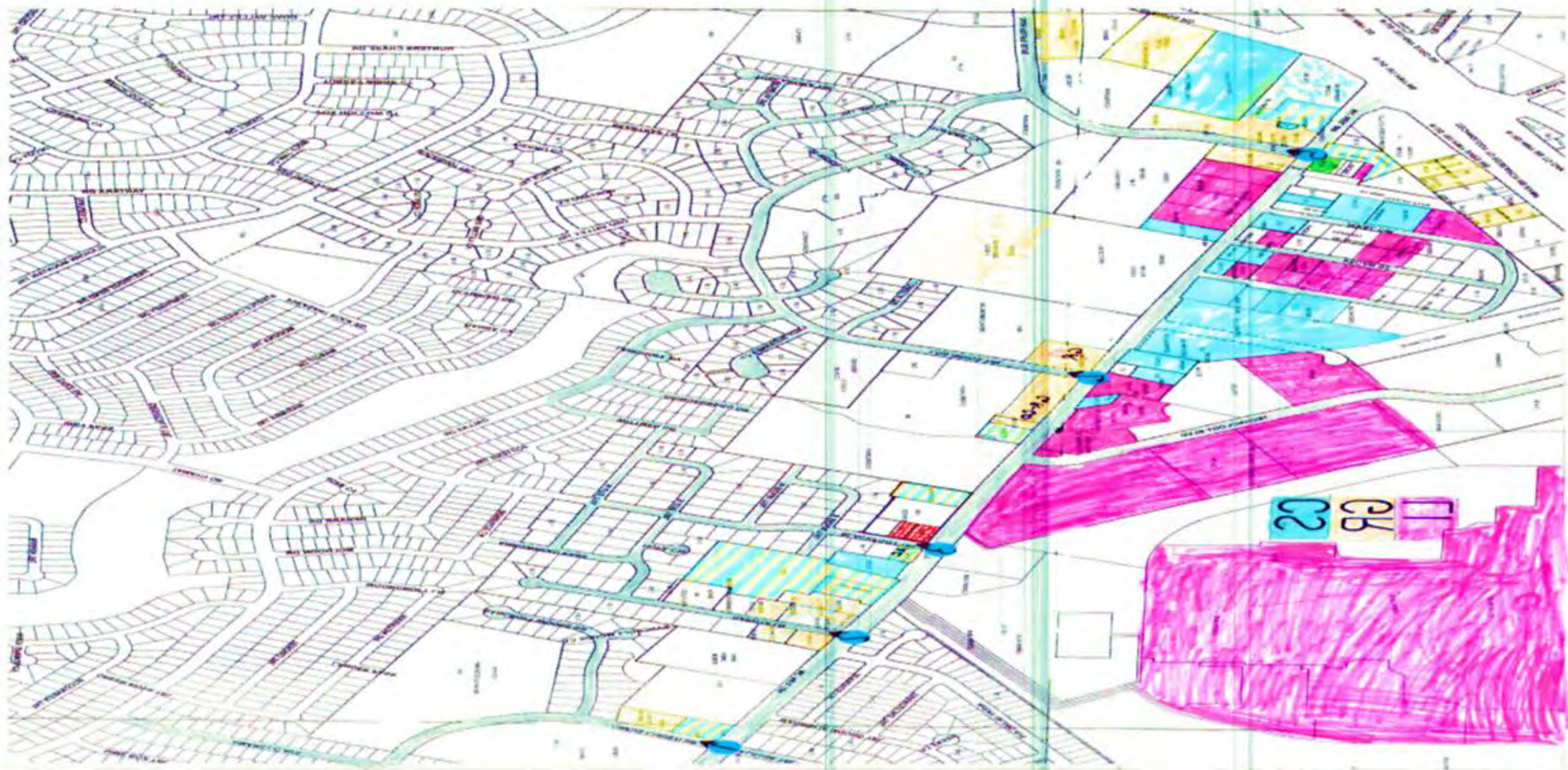
- 1) MR. BIRGANI WOULD ENSURE THAT SIDE OF BUILDING FACING BLACKFOOT IS AESTHETICALLY CONSISTANT WITH RESIDENTIAL CHARACTER OF NEIGHBORHOOD
- 2) ALL VEHICULAR OR PEDESTRIAN TRAFFIC WILL BE CONDUCTED SOLEY IN THE FRONT OF THE BUILDING FACING McNeill
- 3) THE COMMERCIAL USE OF SOME OR ALL OF THE BACK PORTION OF THE BUILDING WILL HAVE NO IMPACT ON NEIGHBORS

\*\*\*MR. BIRGANI'S PERSONAL RESIDENCE IS IMMEDIATELY NEXT DOOR TO THE BLACKFOOT SIDE OF THE BUILDING.\*\*\*



*THE CITY CANNOT JUSTIFY DISPARATE  
ZONING RECOMMENDATION BASED UPON  
THE FOLLOWING PROPERTIES*

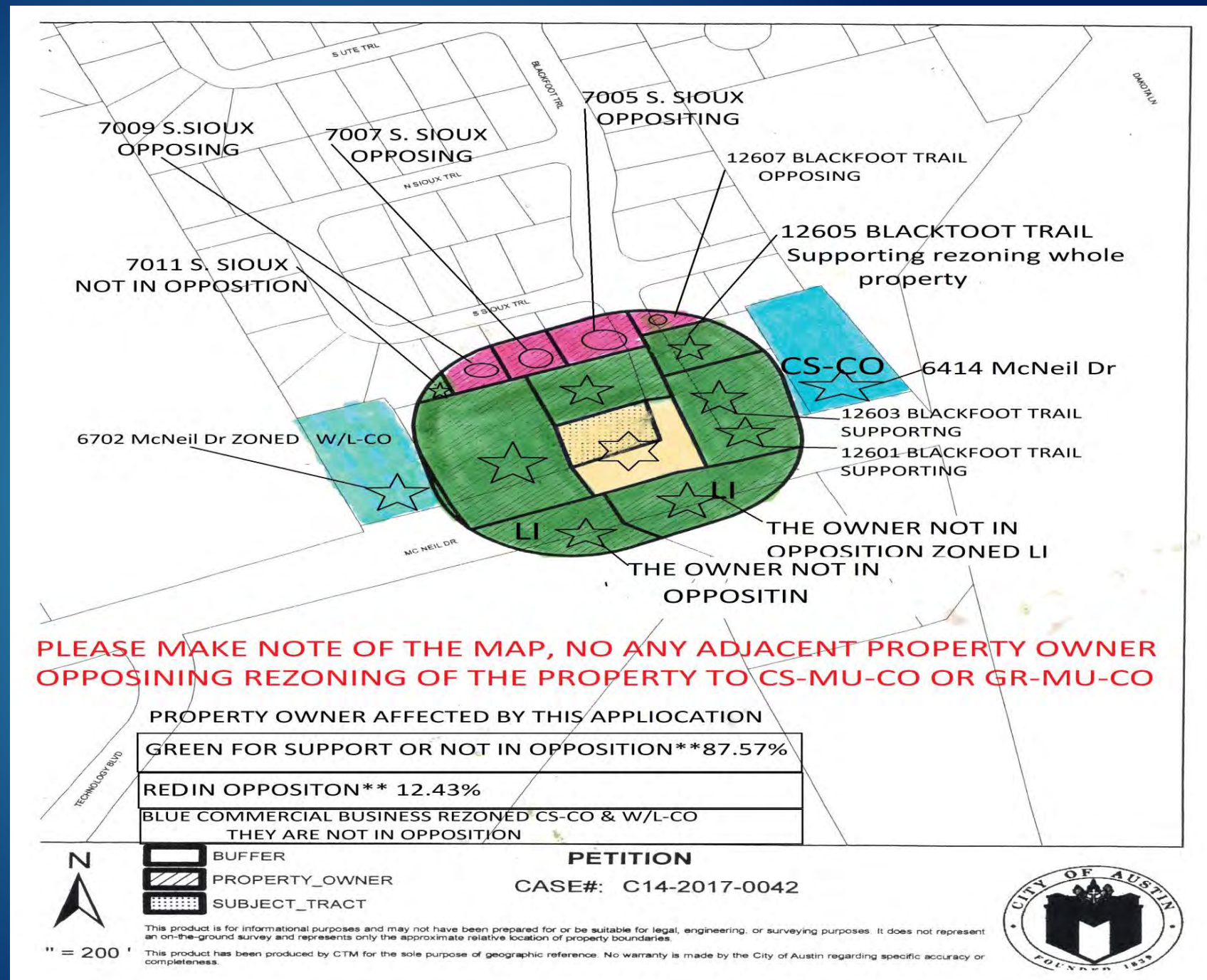






1-NO PROPERTY OWNER ADJACENT TO THIS APPLICATION IS IN OPPOSITON TO ZONING ALL LOT-2 (THE BACK HALF OF THE BUILDING) TO CS-MU-CO OR-MU-CO

2- NEITHER OF TWO RECENTLY REZONED PROPERTIES (HIGHLIGHTED IN BLUE) WAS DIVED BY CITY



1. FOUNDATION AUTO REPAIR - 6750 Corpus Christi Drive/McNeil - **Zoned as GR-CO – next to residence**
2. NEWIMAGE HAIR SALON - 6410 McNeil Drive/Dakota - **Zoned as GR-CO – two doors down from residence**
3. JOHNSON CUSTOM POOLS - 6514 McNeil Drive - **Zoned as CS-CO – adjacent to 5 residences**
4. DAC INTERNATIONAL-AEROSPACE ENGINEERING - 6702 McNeil Drive - **Zoned as W/L – adjacent to 2 residence**
5. NOT YET DEVELOPED - 6810 McNeil Drive - **Recently zoned as GR-CO – across from apartment homes**



6. 6914 McNeil Drive - Recently zoned as GR-CO – adjacent to apartment home and retirement home
7. VIDA MOTOR (auto sales) -7224 McNeil Drive - Zoned as CS-CO – adjacent to a residence
8. ADVANCED AUTO PARTS - 7308 McNeil Drive/San Filipe - Zoned as GR-CO- adjacent to a residence
9. MULTIPLE RESTAURANTS ETC. - 6914 McNeil Drive/San Filipe - Zoned as GR-CO and CS-CO – adjacent to apartment and retired homes





**NEW IMAGE HAIR SALON – 6410 McNeil – GR-CO**





**6914 McNeil – Recently Zoned as GR-CO**





**ADVANCED AUTO PARTS – 7308 McNeil – GR-CO**





**MULTIPLE RESAURANTS – 6914 McNeil – GR-CO AND CS-CO**

## LEGAL DISCRIPTION:

Lot 2, Indian Oaks 2, part of the Wm. J. Baker Survey #10, Recorded in the plat records, Cabinet J, Slide 264, of Williamson County, Texas

## SITE PLAN NOTES:

1. Total site is 25,039 square feet or 0.5748 acres.
2. Total are being developed is 17, 289 Square feet or 0.397 acres.
3. Existing impervious cover
  - a. 1-story building - 3888 SF 15.53%
  - b. Concrete flat work - 1073 SF 4.29%
  - Total Impervious cover - 4961SF 19.81%
4. Imperious cover to remain and new concrete pavement
  - a. 1-story building - 3888 SF 15.53%
  - b. Existing concrete flatwork - 982 SF 3.92%
  - c. New pavement - 91 SF .36%
  - d. New conc. Flat work - 12,812 SF 51.17%
5. Increase in Imperious Cover - 7851 SF - 31.36%
6. Limits of concrete construction within property lines - 13,130 SF



IN 1985, ENTIRE SECTION IN WHICH PROPERTY IS  
SITUATED (INDIAN OAKS 2 SUBDIVISION) WAS ZONED  
ENTIRELY COMMERCIAL  
UNTIL DECEMBER 31, 1997

Neighbors purchasing property in Indian Oaks  
between 1985 and December 31, 1997 had notice of  
the commercial nature of property.

See document below

STATE OF TEXAS  
COUNTY OF WILLIAMSON

§  
§  
§

18833

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, by Deed recorded in Volume 500, Page 496, of the Deed Records of Williamson County, Texas, a copy of which is attached hereto as Exhibit "A", RAYMOND FLOYD DAVIS and wife, ALINE DAVIS, and BEULAH DAVIS, as Grantors, did convey to ROSCOE E. MILLEGAN and wife, ANNIE MILLEGAN, as Grantees, those six (6) tracts of land situated in Williamson County, Texas, as are more fully described on Exhibit "A"; and

WHEREAS, BEULAH DAVIS is now deceased and DIANA EICHSTATDT, joined herein by her husband, DONALD L. EICHSTATDT, is her only heir; and

WHEREAS, ELAINE BARNES, wife of DALE BARNES, is now deceased; and

WHEREAS, RICHARD BOUTON and wife, DIANE BOUTON, CRAIG H. SHERPERT and wife, BARBARA SHERPERT, DALE BARNES and FRANK C. WOLCHICK, JR., are successors in title to portions of the hereinabove referenced property; and

WHEREAS, the above named MILLEGANS, BOUTONS, BARNES, SHERPERTS and WOLCHICK constitute all of the parties with any interest in and to the property described on Exhibit "A"; and

WHEREAS, the Deed attached as Exhibit "A" contains certain restrictions restricting the use of the property for residential purposes only, and the parties hereto now desire to amend said restrictions to permit any lawful use;

NOW THEREFORE, for and in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree that the restrictions imposed upon the property are hereby amended and modified to provide that the property is no longer restricted to use for residential purposes only and may be used for any lawful purpose.

EXECUTED this 21<sup>st</sup> day of April, 1985.

ROScoe C. MILLEGAN

ANNIE MILLEGAN

DIANA EICHSTATDT

DONALD L. EICHSTATDT

RICHARD BOUTON

DIANE BOUTON

CRAIG H. SHERPERT

BARBARA J. SHERPERT

FRANK C. WOLCHICK, JR.

DALE BARNES

STATE OF TEXAS

§  
§  
§

COUNTY OF TARRANT

This instrument was acknowledged before me on APRIL 21, 1985, by